

WATER RIGHT APPLICATIONS

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions relating to a water right application.

Highlighted Provisions:

This bill:

- ▶ changes the time limit on a water right appropriation for a public water supplier;
- ▶ authorizes the segregation of a water right held by a public water supplier; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-12, as last amended by Laws of Utah 2008, Chapters 52 and 311

73-3-27, as last amended by Laws of Utah 2001, Chapter 136

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **73-3-12** is amended to read:

73-3-12. Time limit on construction and application to beneficial use --

Extensions -- Procedures and criteria.

(1) As used in this section:

(a) [~~"Public agency" means:~~] "Public water supplier" is as defined in Section 73-1-4.

~~[(i) a public water supply agency of the state or a political subdivision of the state; or]~~

~~[(ii) the Bureau of Reclamation.]~~

(b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.

(2) (a) An applicant shall construct works, if necessary, and apply the water to beneficial use within the time fixed by the state engineer.

(b) Except as provided by Subsection ~~[(2)(c)]~~ (4), the state engineer may grant an extension of time, not exceeding 50 years from the application's approval date, if the applicant shows diligence or a reasonable cause for delay.

~~[(c) The state engineer may grant an extension of time, beyond 50 years, on an application held by a public agency or a wholesale electrical cooperative if the public agency or wholesale electrical cooperative shows that the water will be needed to meet the reasonable future water or electricity requirements of the public.]~~

~~[(d)]~~ (c) An applicant shall file a request for an extension of time with the ~~[office of the]~~ state engineer on or before the date fixed for filing proof of appropriation.

~~[(e)]~~ (d) The state engineer may grant an extension of time:

(i) not exceeding 14 years after the approval date upon a sufficient showing; and

(ii) beyond 14 years after application and publication of notice.

~~[(f)]~~ (e) (i) The state engineer shall publish a notice of the application once a week for two successive weeks, in a newspaper of general circulation, in the county in which the water ~~[supply]~~ source is located and where the water ~~[is to]~~ will be used.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where ~~[the]~~ an interested party may obtain additional information relating to the application.

~~[(g) Any]~~ (f) A person who owns a water right or holds an application from the water source ~~[of supply]~~ referred to in Subsection (2)~~[(f)]~~(e) may file a protest with the state engineer:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

~~[(h)]~~ (g) In considering an application to extend the time in which to place water to beneficial use under an approved application, the state engineer shall deny the extension of time and declare the application lapsed, unless the applicant affirmatively shows that the applicant has exercised or is exercising reasonable and due diligence in working toward completion of the appropriation.

64 ~~[(f)]~~ (h) (i) The state engineer shall approve the extension of time if the applicant shows
65 reasonable and due diligence.

66 (ii) The approved extension of time is effective so long as the applicant continues to
67 exercise reasonable diligence in completing the appropriation.

68 ~~[(f)]~~ ~~(i)~~ (i) The state engineer shall consider the holding of an approved application by a
69 public ~~[agency]~~ water supplier or a wholesale electrical cooperative to meet the reasonable
70 future water or electricity requirements of the public to be reasonable and due diligence within
71 the meaning of this section for the first 50 years.

72 ~~[(ii)]~~ ~~The state engineer may approve an extension of time beyond 50 years for a public~~
73 ~~agency or a wholesale electrical cooperative, if the public agency or wholesale electrical~~
74 ~~cooperative provides information that shows the water will be needed to meet the reasonable~~
75 ~~future water or electricity requirements of the public.]~~

76 ~~[(k)]~~ (j) If the state engineer finds unjustified delay or lack of diligence in prosecuting
77 the works to completion, the state engineer may:

78 (i) deny the extension of time; or

79 (ii) grant the request in part or upon conditions, including a reduction of the priority of
80 all or part of the application.

81 (3) ~~[(a)]~~ Except as provided by ~~[Subsections (3)(b) and (c)]~~ Subsection (4), an
82 application upon which proof has not been submitted shall lapse and have no further force or
83 effect after the expiration of 50 years from the date of its approval.

84 ~~[(b)]~~ (4) (a) If the works are constructed with which to make beneficial use of the water
85 applied for, the state engineer may, upon showing of that fact, grant additional time beyond the
86 50-year period in which to make proof.

87 ~~[(c)]~~ ~~An application held by a public agency or a wholesale electrical cooperative to~~
88 ~~meet the reasonable future water or electricity requirements of the public, for which proof of~~
89 ~~appropriation has not been submitted, shall lapse, unless extended as provided in Subsection~~
90 ~~(2)(j).]~~

91 (b) (i) The state engineer may approve an extension of time beyond 50 years from the
92 filing of the application in which to make proof for an application held by a public water
93 supplier to meet the reasonable future water requirement of the public or a wholesale electrical
94 cooperative to meet the reasonable future electricity requirement of the public, if the public

water supplier or wholesale electrical cooperative provides information that shows that the water will be needed to meet those future needs.

(ii) The information provided by the public water supplier shall be in accordance with the criteria listed in Subsection 73-1-4(2)(f).

(c) The state engineer shall approve a reasonable extension of time in which to make proof, beyond 50 years, on an application held by a public water supplier to meet the reasonable future water requirement of the public or a wholesale electrical cooperative to meet the reasonable future electricity requirement of the public if the public water supplier or wholesale electrical cooperative has:

(i) constructed works to apply the water to beneficial use; or

(ii) made substantial expenditures to complete the works.

Section 2. Section **73-3-27** is amended to read:

73-3-27. Requests for segregation of pending applications.

(1) (a) Upon written request [in writing] and approval by the state engineer, [applications] an application to appropriate water or to permanently change the point of diversion[;] or place or purpose of water use [of water] may be [divided or] segregated into two or more separate parts[; provided such request shall be made upon forms].

(b) A person shall:

(i) submit the request authorized by Subsection (1)(a) on a form furnished by the state engineer; and [shall]

(ii) include;

(A) the serial number of the application to be segregated[;];

(B) the name[;] and post-office address of the owner of the application[;];

(C) a statement of the nature of the proposed [division or] segregation[;];

(D) the reasons [therefor, and such other information as the state engineer may require.] for the proposed segregation; and

(E) other information required by the state engineer.

[Action] (2) (a) An action taken by the state engineer on [applications] an application for appropriation or permanent change [prior to] before segregation [shall be] is applicable in all respects to the segregated parts [thereof. Upon] of the application.

(b) After segregation the original and each segregated part [shall be treated as] is a

126 separate ~~[applications]~~ application.

127 (c) The approval of a request for segregation ~~[shall]~~ does not:

128 (i) confirm the validity or good standing of the segregated application; or

129 (ii) extend the time for the construction of works. ~~[Action of the state engineer upon~~

130 ~~requests for segregation taken prior to the effective date of this act is approved and confirmed.~~

131 ~~Requests]~~

132 (3) The state engineer shall deny a request for segregation ~~[shall be rejected]~~ if the

133 ~~[approval thereof]~~ segregation would:

134 (a) impair rights; or ~~[would]~~

135 (b) prove detrimental to the public welfare.

136 (4) (a) Segregation of the unused portion of an application being held to meet the

137 reasonable future requirements of the public upon submission of proof by a public water

138 supplier promotes the welfare of the public for the purpose of Subsection (3).

139 (b) The state engineer shall grant a reasonable amount of time within which to submit

140 proof of beneficial use on the unused segregated portion.